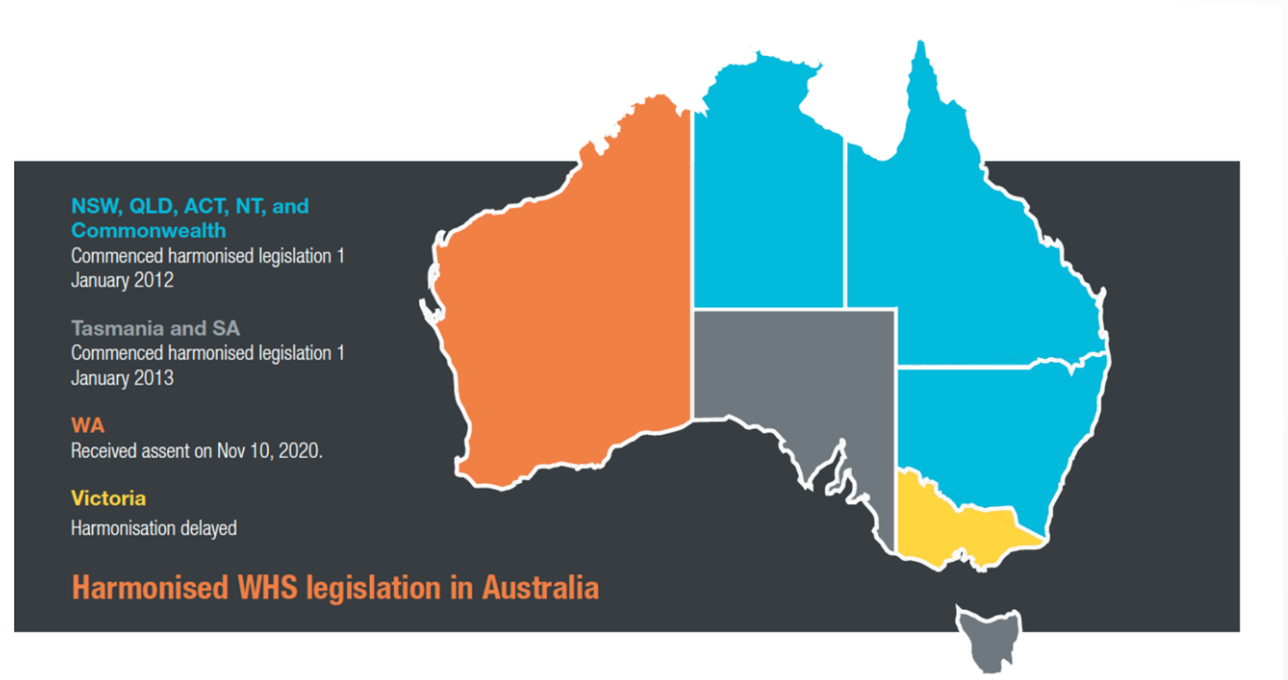


Officers & Their Duties





Under Sections 19 to 29, the Federal Work Health and Safety Act 2011 imposes core duties regarding health and safety on persons conducting a business or undertaking. This is defined as the primary **Duty of Care**.

Duty of Care



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Primary Duty of Care

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Officers & Due Diligence

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Managers & Workers

What is **Duty of Care**?

Duty of care is a legal obligation to take reasonable steps to protect others from harm.



In the context of business, duty of care refers to the responsibility of business owners and employers to protect the health and safety of their employees, and to ensure that their business activities do not harm others.



The primary duty of care as defined in the Work Health and Safety (WHS) Act of 2011 refers to the obligation placed on persons conducting a business or undertaking (**PCBU**) to ensure, so far as is reasonably practicable, the health and safety of:

1. Workers engaged, or caused to be engaged, by the person; and
2. Workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

This duty also extends to ensuring that the health and safety of other persons are not put at risk from work carried out as part of the business or undertaking. This includes, but is not limited to:

- Providing and maintaining a work environment without risks to health and safety.
 - Ensuring safe plant and structures.
 - Ensuring safe systems of work.
- Ensuring the safe use, handling, and storage of plant, structures, and substances.
- Providing adequate facilities for the welfare of workers at work (e.g., toilets, drinking water, washing facilities).
- Providing information, training, instruction, or supervision necessary to protect all persons from risks to their health and safety arising from work carried out as part of the business or undertaking.
- Monitoring the health of workers and the conditions at the workplace to prevent illness or injury.

What is a **PCBU?**

A "person conducting a business or undertaking" (PCBU) is a broad term used to describe various types of business entities and individuals responsible for ensuring health and safety within a workplace.

The definition encompasses a wide range of entities and situations to ensure comprehensive coverage and responsibility for work health and safety.

A PCBU can include:

1. **Companies:** Any incorporated entity, such as corporations, including public and private companies.
2. **Unincorporated Bodies or Associations:** Groups of people who work together for a common purpose but are not formally incorporated.
3. **Sole Traders or Self-Employed Individuals:** Individuals who operate their own business or trade independently.
4. **Government Departments and Public Authorities:** Includes local, state, and federal government bodies and public authorities that conduct business or undertakings.
5. **Partnerships:** Businesses operated by two or more people sharing profits and responsibilities, but not incorporated.
6. **Franchisees and Franchisors:** Entities involved in franchising arrangements, both the franchisors who grant the franchise and the franchisees who operate it.
7. **Associations:** Non-profit and other associations that conduct business or undertakings.
8. **Volunteer Organisations:** Organisations that employ people to carry out work, even if the Organisation is based on volunteer participation.



A PCBU does not include:

- **Workers:** Individuals engaged as employees, contractors, subcontractors, apprentices, trainees, and volunteers who work for a PCBU.
- **Volunteer Associations:** Volunteer groups that do not employ any workers.
- **Elected Members of Local Authorities:** Local government elected members performing their official duties.

Officers

Under the Work Health and Safety (WHS) Act 2011, the term "**officer**" is defined to identify individuals who hold significant roles within an Organisation, with the authority and responsibility to influence its overall conduct and policies, especially concerning health and safety.

The definition of an officer is intended to capture those with substantial decision-making powers and responsibilities.

Officers

An "officer" is defined by referencing Section 9 of the Corporations Act 2001.

Generally, an officer includes:

- **Directors and Secretaries of a Corporation:** Members of the board of directors, including executive and non-executive directors, and company secretaries.
- **Persons Who Make, or Participate in Making, Decisions That Affect the Whole or a Substantial Part of the Business:** Individuals involved in decision-making at a high level within the organisation.
- **Persons Who Have the Capacity to Significantly Affect the Corporation's Financial Standing:** Individuals with significant influence over the financial policies and practices of the organisation.
- **Persons in Accordance with Whose Instructions or Wishes the Directors of the Corporation Are Accustomed to Act:** Those who can influence or direct the board of directors or the corporation's management, even if they do not hold a formal title.

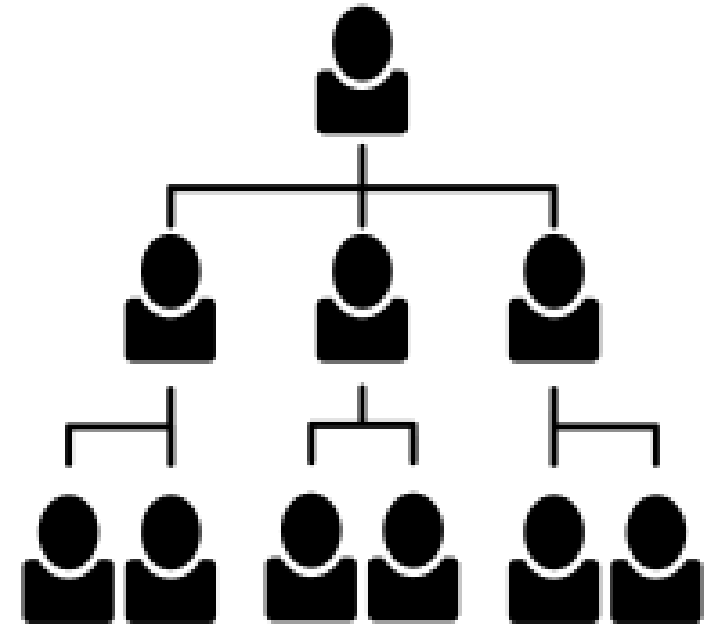
This Includes:

- **Senior Executives:** High-ranking executives such as Chief Executive Officers (CEOs), Chief Operating Officers (COOs), Chief Financial Officers (CFOs), and other senior managers who influence the management and policies of the organisation.
- **Partners in a Partnership:** Each partner is considered an officer because they participate in decision-making affecting the business.
- **Key Decision-Makers in Non-Corporate Entities:** Individuals who play significant roles in the management and decision-making processes of non-corporate entities, such as trustees of trusts or members of management committees in associations.



This Excludes:

- **Middle Managers and Supervisors:** Typically, individuals in middle management or supervisory roles are not considered officers unless they are involved in high-level decision-making affecting the whole or a substantial part of the business.
- **Workers:** Employees and other workers who do not participate in high-level decision-making are not considered officers.



The PCBU itself is ultimately responsible for the safety of the workplace.



In a practical sense, however, the officers at varying levels are the people responsible for ensuring the PCBU and the decisions made in its operations are legally compliant.



The level of responsibility will vary depending on the hierarchical structure of the PCBU, the type of decision being made (e.g. day-to-day vs. high-level operational decisions), and the number of officers involved.

Duties of Officers

Officers have a duty to exercise **due diligence** to ensure that the PCBU complies with its health and safety obligations under the WHS Act. This includes taking reasonable steps to:

- Acquire and keep up-to-date knowledge of work health and safety matters.
- Understand the nature of the operations and associated hazards and risks.
- Ensure the PCBU has appropriate resources and processes to eliminate or minimise risks.
- Ensure the PCBU has effective processes for receiving and responding to information about incidents, hazards, and risks.
- Ensure the PCBU complies with its duties and obligations under the WHS Act.
- Verify the provision and use of resources and processes to ensure health and safety.

Workers and Managers



The Work Health and Safety (WHS) Act 2011 outlines specific duties for both managers and workers to ensure a safe and healthy workplace.



These duties are designed to complement each other, promoting a collaborative approach to managing health and safety risks.

Duties of Managers

Managers, often considered officers under the WHS Act, have duties that align with the concept of due diligence. These duties include:

Ensuring Compliance: Managers must ensure that the PCBU complies with the WHS Act and Regulations.

Providing Resources: They must ensure that adequate resources and processes are available and used to minimise or eliminate health and safety risks.

Monitoring Safety Performance: Managers should regularly monitor and review the health and safety performance of the organisation.

Promoting Safety Culture: They should promote a positive safety culture, encouraging workers to actively participate in safety practices and processes.

Duties of Managers

Managers, often considered officers under the WHS Act, have duties that align with the concept of due diligence. These duties include:

Training and Supervision: Ensuring that workers receive proper training, information, instruction, and supervision to perform their work safely.

Consulting with Workers: Engaging in meaningful consultation with workers and health and safety representatives regarding matters that affect their health and safety.

Duties of Workers

Workers have a duty to take care of their own health and safety and ensure their actions do not adversely affect the health and safety of others. Their specific duties include:

Following Instructions and Procedures: Workers must comply with any reasonable instruction given by the PCBU to ensure safety.

Using Equipment Properly: They must use equipment, personal protective equipment (PPE), and safety devices as intended and according to training.

Reporting Hazards and Incidents: Workers should promptly report any hazards, risks, or incidents to their manager or supervisor.

Participating in Training: Engaging in required health and safety training and implementing the knowledge gained into their work practices.

Duties of Workers

Workers have a duty to take care of their own health and safety and ensure their actions do not adversely affect the health and safety of others. Their specific duties include:

Taking Reasonable Care: Workers should take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions at work.

Cooperating with Policies and Procedures: Workers must cooperate with the PCBU's policies and procedures relating to health and safety.

A Closer Examination



DUE DILIGENCE



REASONABLY
PRACTICABLE



RESOURCES &
PROCESSES



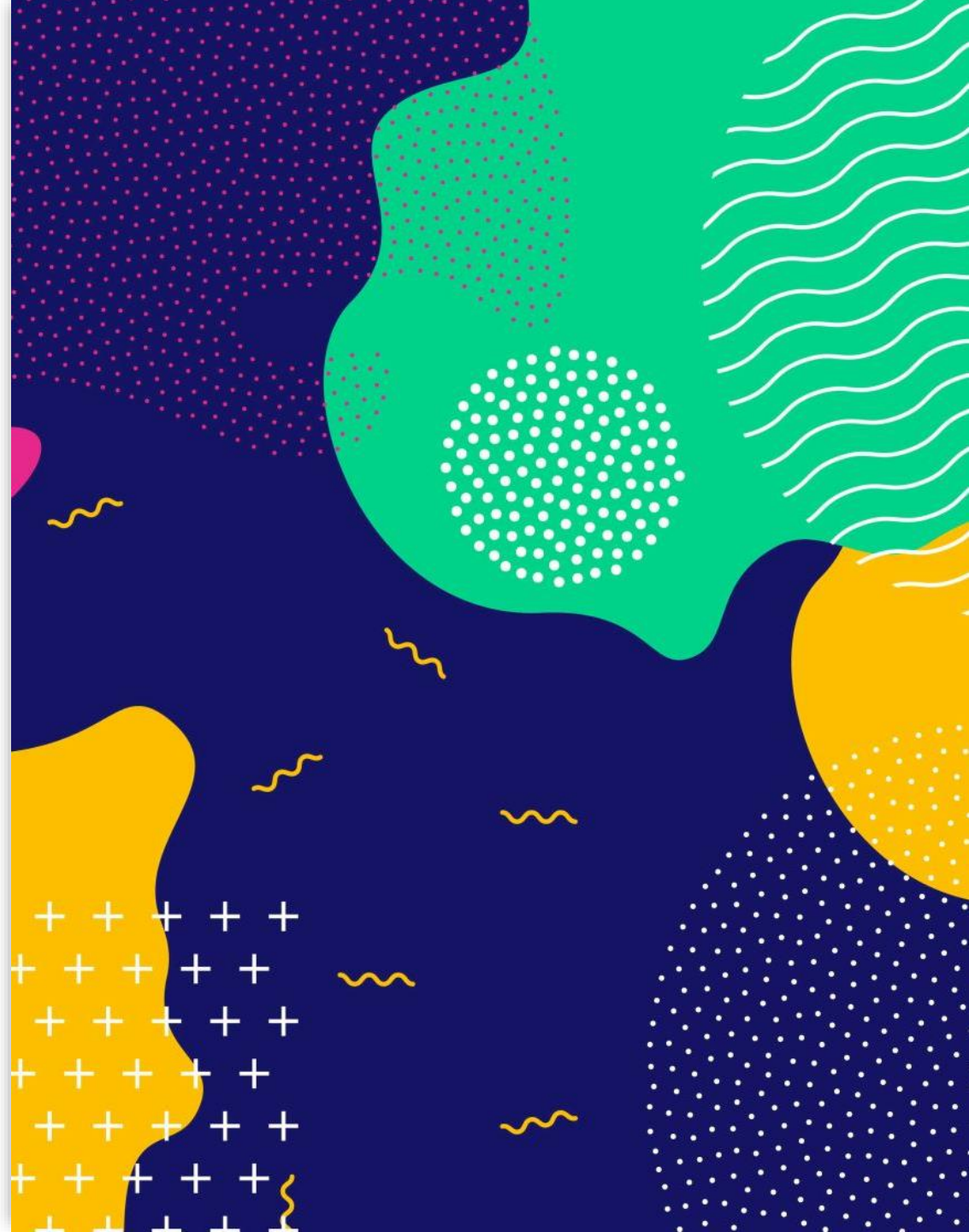
THE DUTY TO
CONSULT

Due Diligence

Under the Work Health and Safety (WHS) Act 2011, "**due diligence**" is a concept applied to officers of a person conducting a business or undertaking (PCBU).

It is defined to ensure that these officers take proactive steps to ensure the organisation complies with its health and safety duties and obligations.

The specific actions that constitute due diligence are outlined in Section 27(5) of the WHS Act.



Definition of Due Diligence

Due diligence involves taking reasonable steps to:

1. **Acquire and Keep Up-to-Date Knowledge of Work Health and Safety Matters:** Officers must stay informed about relevant health and safety issues, practices, and legislation.
2. **Understand the Nature of the Operations and the Hazards and Risks Associated:** Officers need to have a clear understanding of what the organisation does, and the specific health and safety risks involved.
3. **Ensure Appropriate Resources and Processes are Used:** Officers must ensure that the organisation has the necessary resources (such as time, money, personnel) and processes (such as safety management systems) to eliminate or minimise health and safety risks.

Definition of Due Diligence

Due diligence involves taking reasonable steps to:

4. **Ensure Appropriate Processes for Receiving and Responding to Information:** Officers must ensure that the organisation has effective processes for receiving information about incidents, hazards, and risks, and that there are appropriate mechanisms for responding in a timely manner.
5. **Ensure Compliance with Duties and Obligations:** Officers must ensure that the organisation complies with its legal duties under the WHS Act, including:
 - Reporting notifiable incidents.
 - Consulting with workers.
 - Complying with notices issued under the Act.
 - Providing training and instruction to workers about health and safety.
 - Ensuring health and safety representatives receive their entitlements to training.
6. **Verify the Provision and Use of Resources and Processes:** Officers must verify that the resources and processes for health and safety are being provided and used effectively within the organisation.

Reasonably Practicable



THE TERM "**REASONABLY PRACTICABLE**" IS A KEY CONCEPT IN THE WORK HEALTH AND SAFETY (WHS) ACT OF 2011 AND IS DEFINED TO GUIDE DUTY HOLDERS IN MEETING THEIR HEALTH AND SAFETY OBLIGATIONS.



THE DEFINITION OF "REASONABLY PRACTICABLE" IS OUTLINED IN SECTION 18 OF THE WHS ACT.



IT INVOLVES A BALANCING ACT, CONSIDERING WHAT IS POSSIBLE IN THE CIRCUMSTANCES TO ENSURE HEALTH AND SAFETY, WHILE TAKING INTO ACCOUNT VARIOUS FACTORS.

Reasonably Practicable

Specifically, "reasonably practicable" means that which is, or was at a particular time, reasonably able to be done to ensure health and safety, considering and weighing up all relevant matters including:

- **Likelihood of the Hazard or Risk:** The probability of the hazard or risk occurring. If a hazard is more likely to cause harm, then more effort to mitigate the risk is expected.
- **Degree of Harm:** The potential severity of the harm that could result from the hazard or risk. More severe potential harm warrants more stringent measures to prevent it.
- **Knowledge of the Hazard or Risk:** What the person concerned knows, or ought reasonably to know, about the hazard or risk, and ways of eliminating or mitigating it. This includes being aware of any information, instruction, training, or supervision required.



Reasonably Practicable

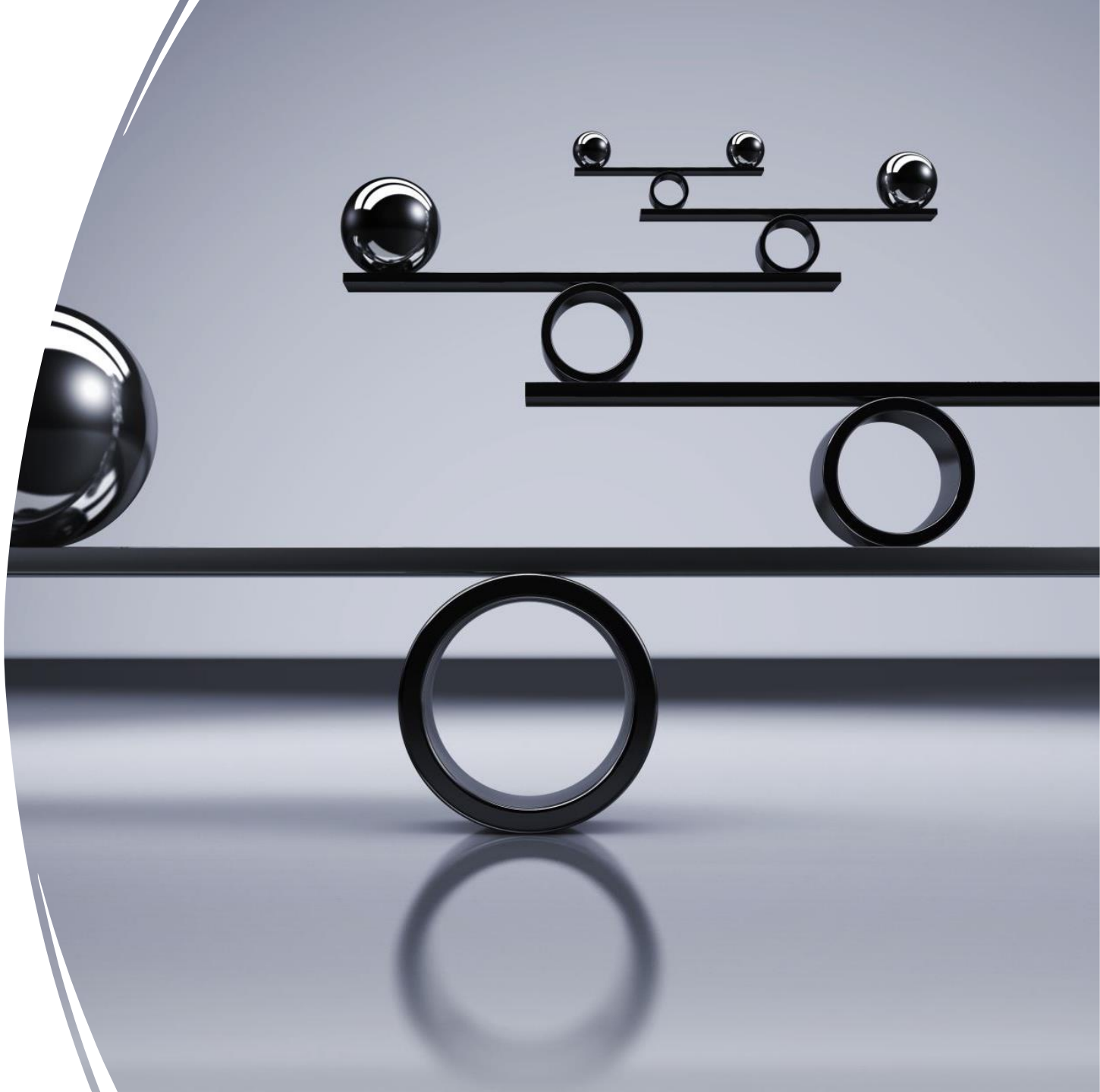
- **Availability and Suitability of Ways to Eliminate or Minimise the Risk:** The methods available to eliminate or reduce the hazard or risk, and whether they are suitable given the circumstances. This involves considering whether there are established ways to mitigate the risk.
- **Cost Associated with Available Ways to Eliminate or Minimise the Risk:** The cost of implementing the safety measures, including whether the cost is grossly disproportionate to the risk. While cost is a consideration, it is not an excuse to do nothing if measures are reasonably practicable.



Reasonably Practicable

These factors together guide duty holders in making informed, balanced decisions about the necessary steps to ensure health and safety.

The concept of "reasonably practicable" ensures that duty holders take appropriate actions based on the severity of the risk, the knowledge available, and the feasibility and costs of the measures required, ensuring a fair and practical approach to workplace safety.





Resources & Processes

Officers have a responsibility to confirm that the resources (such as equipment, personnel, and funds) and processes (such as safety procedures, training programs, and reporting mechanisms) required to manage health and safety risks are not only available but are also being properly utilised and effective in practice.

Key Components:

- **Provision of Resources:** Equipment and Materials: Ensuring that all necessary safety equipment and materials are provided and maintained. This includes personal protective equipment (PPE), safety devices, and machinery.
- **Human Resources:** Ensuring that sufficient personnel are allocated to manage and oversee health and safety tasks. This includes hiring safety officers or dedicated health and safety managers if necessary.
- **Financial Resources:** Allocating appropriate budgetary resources to health and safety initiatives, training programs, and equipment maintenance.



Implementation of Processes:

- **Safety Procedures:** Establishing and implementing comprehensive safety procedures and protocols to manage identified risks.
- **Training Programs:** Conducting regular training sessions to ensure all workers are aware of safety procedures and know how to use safety equipment.
- **Incident Reporting Mechanisms:** Implementing processes for workers to report hazards, near misses, and incidents promptly and ensuring that these reports are acted upon.



Verification and Monitoring:

- **Regular Audits and Inspections:** Conducting periodic audits and inspections to verify that safety resources and processes are in place and functioning as intended.
- **Performance Metrics:** Establishing and monitoring key performance indicators (KPIs) related to health and safety, such as incident rates, training completion rates, and compliance levels.
- **Feedback and Improvement:** Gathering feedback from workers and using it to continually improve health and safety processes and resources.



Practical Steps for Verification:

- **Review Records and Documentation:** Ensure that all safety procedures are documented, and records of training, maintenance, and incident reports are kept up to date.
- **Engage with Workers:** Regularly communicate with workers to ensure they are aware of safety procedures, have access to necessary resources, and feel confident in reporting safety issues.
- **Inspect Workplaces:** Conduct regular on-site inspections to observe whether safety practices are being followed and whether resources are being used appropriately.
- **Evaluate Effectiveness:** Assess the effectiveness of health and safety measures through data analysis and review of incident trends, making adjustments as necessary.

The Duty to Consult

Under the Work Health and Safety (WHS) Act of 2011, the **duty to consult** with other duty holders is a critical aspect of ensuring a collaborative approach to managing workplace health and safety.

This duty is outlined in Section 46 of the WHS Act, which stipulates that if more than one person has a duty in relation to the same matter, each person with the duty must, so far as is **reasonably practicable**, consult, cooperate, and coordinate activities with all other persons who have a duty in relation to the same matter.

The Duty to Consult

This duty to consult involves the following key elements:

- **Identify Duty Holders:** Recognise who the other duty holders are in relation to the specific matter. This could include other PCBU's, contractors, subcontractors, suppliers, and any others who share responsibility for the health and safety of workers or others affected by the work.
- **Consult:** Engage in discussions with the other duty holders about the risks and the measures that need to be taken to manage these risks. This involves sharing information about the hazards and risks and discussing how these will be managed collectively.
- **Cooperate:** Work together with the other duty holders to implement the agreed measures. Cooperation ensures that all parties are working towards the same safety goals and that their actions are harmonised.
- **Coordinate Activities:** Ensure that the actions of each duty holder do not conflict and that all safety measures are integrated effectively. Coordination helps in avoiding gaps or overlaps in safety measures and ensures a seamless approach to managing risks.



Case Study



Scaffold Collapse

1 April 2019



Incident Overview

Two form workers were working on a multi-story mixed-use construction in Macquarie Park.

They were on a concrete slab working beside the base of scaffolding approximately 9 stories high when it collapsed, crushing both workers.

One worker was transferred to hospital with critical injuries while the other died at the scene.



In the months leading up to 1 April 2019, the Scaffold was gradually removed.

In at least three weeks leading up to the incident however, no inspections were performed.

On 1 April 2019 at approximately 12:00pm, the Scaffold collapsed, which at the time was 30 meters high and bore a minimum live load of 17,905 kilograms consisting of bricks, formwork, and other stored material.



Investigation

SafeWork NSW conducted an investigation to determine the case and circumstances of the incident. Expert investigations concluded that:

- (a) the ties adjoining the Scaffold to Building L1 were not in use at the time;
- (b) a live load of 17,905kg was in gross excess of the maximum 675-kilogram heavy duty weight-bearing capacity;
- (c) an inspection of the Scaffold prior to the removal of five vertical transoms should have been performed;
- (d) had the inspections and structural analysis of the Scaffold been performed, it would have been identified that the Scaffold was at a significant risk of collapse; and
- (e) if it had been vertically braced, the Scaffold would not have been at risk of collapse.



Prosecution

On 17 December 2020, the construction company was convicted for breaches against the NSW WHS Act 2011 and fined \$900,000 as a result of the incident.

The company was also served a Proposed Project Order, which required them to contribute a further \$104,000 and establish a working group to deliver a scaffolding industry safety standard over a 12-month period.

Conclusion



Duties under the Act

PCBU (Primary Duty of Care) - Section 19

- Provide safe work environment
- Provide safe plant and structures
- Provide safe systems of work
- Provide safe use of plant and structures
- Provide welfare facilities (e.g. toilets)
- Provide adequate information and training
- Provide health monitoring

Officers (Due Diligence) - Section 27

- Acquire up-to-date knowledge of WHS matters
- Gain an understanding of the business' operations and relevant hazards / risks
- Ensure appropriate resources and processes to manage WHS
- Ensure PCBU has processes to receive WHS information
- Ensure PCBU complies with legal duties

Workers - Section 28

- Take care of yourself
- Take care of others
- Follow procedure
- Follow instruction

